



JOHN M. URBAN  
Commissioner

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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION  
COMMUNITY ANTENNA TELEVISION COMMISSION  
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JUN 17 1993

(617) 727-6925  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 16, 1993

VIA FEDERAL EXPRESS

Hon. Donna R. Searcy, Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking In the Matter of  
Rate Regulation - Docket No. 92-266

Dear Ms. Searcy:


I have enclosed an original and ten (10) copies of the  
Comments of the Massachusetts Community Antenna Television  
Commission for filing in connection with the captioned matter.

Please place me on the service list for this docket matter.

In addition, please mark one copy of these comments "filed"  
and return it to me in the envelope I have enclosed.

Please do not hesitate to contact me if you should have any  
questions in connection with this matter. In the meantime, I  
appreciate your assistance.

Sincerely,

  
John M. Urban  
Commissioner

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Massachusetts Community Antenna Television Commission  
(the "Massachusetts Commission") is the state agency charged with

### Exclusion of Low Penetration Systems From the Benchmarks

The Further Notice states that the FCC's statistical comparison of systems facing "effective competition" versus those not facing effective competition revealed a competitive rate differential of "approximately 10%." Further Notice, Paragraph 560. Further, it states that if the FCC were to conduct a similar study that excluded systems in low penetration areas (as defined by §3(a)(1)(1)(A) of the Act) a rate differential of

systems that are subject to effective competition. Section 3(a)(b)(2)(C)(i). In turn, "effective competition" is defined to include systems with low penetration. Section 3(a)(1)(1)(A). Therefore, we believe that the language of the 1992 Act limits the FCC's ability to eliminate from consideration the rates for systems with low penetration. However, we do believe that (because Congress instructed the FCC only to "take into account" these various factors) consistent with sound reasoning the FCC does have the ability to assign relative weight to the various factors it must consider.

Although we believe that the FCC has the latitude to assign a varying weight to low penetration systems, we would consider this as hazardous tinkering with a regulatory approach that already, in its present form, poses serious methodological questions. The Massachusetts Commission has serious concerns about directly linking regulated rates exclusively to the sample of systems that meet the effective competition standard. We have questions as to whether or not these systems represent healthy competitive markets. Further, even assuming that these systems represent competition from the standpoint of internal validity, we have additional and greater reservations as to whether or not the small sample size represents data that can be generalized.

While we have serious concerns about the methodology for developing the benchmarks, we acknowledge that the benchmark approach is simply a theoretical construct designed to compare and affect rates in a general way that minimizes administrative

burdens. Further, we realize that the FCC has stated that it will review and modify the benchmarks if required. Finally, we acknowledge that cost-of-service showings and the FCC's study of out-liers will present data that will allow the FCC to modify the benchmarks, if required.

While we do not favor altering the benchmarks at this point, we should state that this opinion should not be construed as opposition to a lowering of the benchmarks if evidence illustrates the appropriateness of lower rates. If, after further study, the FCC determines that reasonable returns and reasonable rates call for benchmark rates to be 28%, 50% or any other percentage point below the September 30, 1992 benchmark rates, we would call for the tables to be so modified. However, any such modification should be made only after study and review.

Lastly, before leaving this subject we call upon the FCC to consider the implications that a significant decrease in the benchmark rates potentially could have on triggering cost-of-service showings. The FCC has appropriately created what it refers to as a regulatory release valve for benchmark reviews: cost-of-service studies. This office commends the FCC for the development of its benchmark/cost-of-service scheme. However, we strongly caution the FCC that if changes are made to the benchmarks in a manner that results in the denial of a reasonable return, local, state and federal regulators will face an avalanche of regulatory hearings, the very same administrative process that the FCC has sought to avoid.

### Channel Factors for Determining the Benchmarks

In its May 7, 1993 Public Notice entitled "Cable Television Rate Regulation Questions and Answers" (the "Public Notice"), the FCC states that for purposes of completing FCC Form 393, basic "[c]hannels are not excluded from consideration based on their contents and may include, for example, directory and menu channels." Public Notice, Question #15, Page 5. As outlined in the following paragraph, we believe that the allowance of menu channels and the like conflicts with a reading of the Act.

Consistent with Section 3(a)(b)(7) of the Act, the FCC's definition of "basic service" includes domestic television broadcast stations and PEG programming required by the franchise to be carried on the basic tier, and any "video programming signals" added to the basic tier by the cable operator. 47 CFR §76.901. Video programming, in turn, is defined in the Communications Act of 1934 as ". . . programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. §522(16). Based on our review of these definitions, we believe that character generated channels or menu channels should not be included in the calculation to determine a benchmark rate.

In reviewing this question, we have considered that the FCC may have been concerned about problems in determining whether or not a channel is "comparable" to a broadcast station, and thus sought to minimize these subjective determinations. Moreover, we realize that the underlying concern is that cable operators and

franchising authorities should use the same definition of a channel in conducting benchmark reviews that the FCC used when formulating the benchmarks. Regardless of the FCC's determination on this issue, we believe that there is a need for clarification on this matter.

Act.<sup>1</sup> However, our reading of the FCC's Further Notice indicates that the more restrictive wording set forth in 47 CFR §76.923 would exclude the regulation of interdiction equipment.<sup>2</sup>

Our office is not qualified to lend a prediction as to the long-term viability of interdiction technology; however, we do recognize interdiction as a means of reducing a number of consumer inconveniences. Specifically, interdiction eliminates the need for additional remote controls; allows for full television set functionality for picture-on-picture, taping one channel while watching another, etc.; and allows for immediate compliance with the FCC's tier buy-through regulations.

While we would not advance any position in favor of one technology over another, we believe that there is significant public interest in ensuring that interdiction technology is not burdened by a regulatory handicap. By excluding consideration of interdiction equipment in customer equipment rate determinations, the FCC may be creating a disincentive for operators to install interdiction. Therefore, we request that the FCC consider the public benefit and regulatory consistency of incorporating interdiction technology into the definition of equipment to be

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<sup>1</sup> Section 3(a)(b)(3) calls for the regulation of rates for ". . . equipment used by subscribers to receive the basic service tier. . . ." In addition, the FCC is directed to identify rates for cable programming services that are unreasonable. Section 3(a)(c)(1)(A). The definition of "cable programming service" includes the ". . . installation or rental of equipment used for the receipt of such video programming . . . ." Section 3(a)(1)(2).

<sup>2</sup> 47 CFR §76.923 states that "[t]he equipment regulated under this section consists of all equipment in a subscriber's home that is used to receive the basic service tier. . . ." (emphasis added).

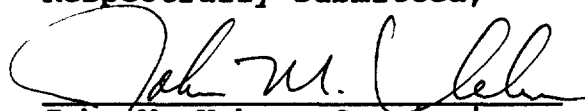
regulated, where the interdiction equipment serves an identical or similar function as a converter box.

With this said, we would suggest that any ruling on this matter should limit the ability of an operator to "load" interdiction units with non-subscriber reception components. For example, we believe that active devices (such as amplifiers or line extenders) and passive devices (such as taps) should not be considered equipment to be regulated even if these components share the same housing as the interdiction unit. We would also favor excluding any other opportunity for "loading" costs such as those for powering the unit.

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In closing, as always, we appreciate the opportunity to comment on these matters of great importance to cable television subscribers and to the cable television industry.

Respectfully submitted,

  
John M. Urban, Commissioner

June 16, 1993